



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GRANTLEY BRATHWAITE,

Plaintiff,

-against-

CITY OF NEW YORK, et al.,

Defendants.

19-CV-9235 (PGG) (BCM)

ORDER

BARBARA MOSES, United States Magistrate Judge.

Defendants' March 19, 2021 letter-motion (Dkt. No. 33) (the Motion), which asks the Court to "order plaintiff to respond to defendants' first set of interrogatories and document requests in accordance with Federal Rules of Civil Procedure 33 and 34, and deem any objections thereto waived," *id.* at 1, is hereby resolved as follows.

Plaintiff responded to defendants' discovery requests on March 25, 2021 (see Dkt. No. 35); thus, the portion of the Motion seeking an order compelling plaintiff to respond to defendants' discovery requests is DENIED AS MOOT. However, defendants are entitled to monetary sanctions to recover their reasonable attorneys' fees incurred in making the Motion, pursuant to Fed. R. Civ. P. 37(a)(5)(A), because the responses were originally due January 2, 2021, *see* Mot. at 1, and because defendants, who previously attempted to obtain responses without judicial intervention, *see* Mot. Ex. B, were ultimately required to file the Motion in order to obtain compliance. *See* Fed. R. Civ. P. 37(a)(5)(A) (court "must" award moving party its "reasonable expenses incurred in making the motion, including attorney's fees," where the overdue discovery is provided only "after the motion was filed").

Defendants' successful motion took the form of a two-page letter with two attached exhibits. The Court estimates that counsel's reasonable fees incurred in preparing the Motion were \$500. If defendants seek a larger award, they shall file a fee application, limited to the amount of reasonable attorneys' fees (and any other expenses) incurred in making the Motion,

supported by properly authenticated contemporaneous time records and documentation of any out-of-pocket expenses, no later than **April 5, 2021**. Plaintiff's response, which shall similarly be limited to the amount of the fees and other expenses reasonably incurred in making the Motion, shall be due no later than **April 12, 2021**. If defendants accept the Court's estimate of \$500, that sum shall be paid by plaintiff to defendants no later than **April 12, 2021**. Because plaintiff's opposition letter gives no hint of the reason for the lengthy delay in responding to defendants' discovery requests, the sanction shall run jointly and severally against plaintiff and his counsel.

Exercising its broad discretion concerning discovery misconduct, the Court declines defendants' request to deem all of plaintiff's objections to defendants' requests waived. If the misconduct is repeated, the Court is unlikely to reach the same result.

For the foregoing reasons, defendants' letter-motion is GRANTED IN PART AND DENIED IN PART. The Clerk of Court is respectfully directed to close the motion at Dkt. No. 33.

Dated: New York, New York
March 29, 2021

SO ORDERED.



BARBARA MOSES
United States Magistrate Judge